

103^D CONGRESS
2^D SESSION

H. R. 4079

To reform habeas corpus.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1994

Mr. HYDE introduced the following bill; which was referred to the Committee
on the Judiciary

A BILL

To reform habeas corpus.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—POST CONVICTION PE-**
4 **TITIONS: GENERAL HABEAS**
5 **CORPUS REFORM**

6 **SEC. 101. PERIOD OF LIMITATION FOR FILING WRIT OF HA-**
7 **BEAS CORPUS FOLLOWING FINAL JUDGMENT**
8 **OF A STATE COURT.**

9 Section 2244 of title 28, United States Code, is
10 amended by adding at the end the following:

11 “(d) A one-year period of limitation shall apply to an
12 application for a writ of habeas corpus by a person in cus-

1 today pursuant to the judgment of a State court. The limi-
2 tation period shall run from the latest of the following
3 times:

4 “(1) The time at which State remedies are ex-
5 hausted.

6 “(2) The time at which the impediment to filing
7 an application created by State action in violation of
8 the Constitution or laws of the United States is re-
9 moved, where the applicant was prevented from fil-
10 ing by such State action.

11 “(3) The time at which the Federal right as-
12 serted was initially recognized by the Supreme
13 Court, where the right has been newly recognized by
14 the Court and is retroactively applicable.

15 “(4) The time at which the factual predicate of
16 the claim or claims presented could have been dis-
17 covered through the exercise of reasonable dili-
18 gence.”.

19 **SEC. 102. AUTHORITY OF APPELLATE JUDGES TO ISSUE**
20 **CERTIFICATES OF PROBABLE CAUSE FOR AP-**
21 **PEAL IN HABEAS CORPUS AND FEDERAL COL-**
22 **LATERAL RELIEF PROCEEDINGS.**

23 Section 2253 of title 28, United States Code, is
24 amended to read as follows:

1 **“§ 2253. Appeal**

2 “(a) In a habeas corpus proceeding or a proceeding
3 under section 2255 of this title before a circuit or district
4 judge, the final order shall be subject to review, on appeal,
5 by the court of appeals for the circuit where the proceed-
6 ing is had.

7 “(b) There shall be no right of appeal from such an
8 order in a proceeding to test the validity of a warrant to
9 remove, to another district or place for commitment or
10 trial, a person charged with a criminal offense against the
11 United States, or to test the validity of his detention pend-
12 ing removal proceedings.

13 “(c) An appeal may not be taken to the court of ap-
14 peals from the final order in a habeas corpus proceeding
15 where the detention complained of arises out of process
16 issued by a State court, or from the final order in a pro-
17 ceeding under section 2255 of this title, unless a circuit
18 justice or judge issues a certificate of probable cause.”.

19 **SEC. 103. CONFORMING AMENDMENT TO THE RULES OF AP-**
20 **PELLATE PROCEDURE.**

21 Federal Rule of Appellate Procedure 22 is amended
22 to read as follows:

23 **“RULE 22**

24 **“HABEAS CORPUS AND SECTION 2255 PROCEEDINGS**

25 **“(a) APPLICATION FOR AN ORIGINAL WRIT OF HA-**
26 **BEAS CORPUS.—An application for a writ of habeas cor-**

1 pus shall be made to the appropriate district court. If ap-
2 plication is made to a circuit judge, the application will
3 ordinarily be transferred to the appropriate district court.
4 If an application is made to or transferred to the district
5 court and denied, renewal of the application before a cir-
6 cuit judge is not favored; the proper remedy is by appeal
7 to the court of appeals from the order of the district court
8 denying the writ.

9 “(b) NECESSITY OF CERTIFICATE OF PROBABLE
10 CAUSE FOR APPEAL.—In a habeas corpus proceeding in
11 which the detention complained of arises out of process
12 issued by a State court, and in a motion proceeding pursu-
13 ant to section 2255 of title 28, United States Code, an
14 appeal by the applicant or movant may not proceed unless
15 a circuit judge issues a certificate of probable cause. If
16 a request for a certificate of probable cause is addressed
17 to the court of appeals, it shall be deemed addressed to
18 the judges thereof and shall be considered by a circuit
19 judge or judges as the court deems appropriate. If no ex-
20 press request for a certificate is filed, the notice of appeal
21 shall be deemed to constitute a request addressed to the
22 judges of the court of appeals. If an appeal is taken by
23 a State or the Government or its representative, a certifi-
24 cate of probable cause is not required.”.

1 **SEC. 104. DISCRETION TO DENY HABEAS CORPUS APPLICA-**
2 **TION DESPITE FAILURE TO EXHAUST STATE**
3 **REMEDIES.**

4 Section 2254(b) of title 28, United State Code, is
5 amended to read as follows:

6 “(b) An application for a writ of habeas corpus in
7 behalf of a person in custody pursuant to the judgment
8 of a State court shall not be granted unless it appears
9 that the applicant has exhausted the remedies available
10 in the courts of the State, or that there is either an ab-
11 sence of available State corrective process or the existence
12 of circumstances rendering such process ineffective to pro-
13 tect the rights of the applicant. An application may be
14 denied on the merits notwithstanding the failure of the
15 applicant to exhaust the remedies available in the courts
16 of the State.”.

17 **SEC. 105. PERIOD OF LIMITATION FOR FEDERAL PRIS-**
18 **ONERS FILING FOR COLLATERAL REMEDY.**

19 Section 2255 of title 28, United States Code, is
20 amended by striking the second paragraph and the penul-
21 timate paragraph thereof, and by adding at the end the
22 following new paragraphs:

23 “A two-year period of limitation shall apply to a mo-
24 tion under this section. The limitation period shall run
25 from the latest of the following times:

1 “(1) The time at which the judgment of convic-
2 tion becomes final.

3 “(2) The time at which the impediment to mak-
4 ing a motion created by governmental action in vio-
5 lation of the Constitution or laws of the United
6 States is removed, where the movant was prevented
7 from making a motion by such governmental action.

8 “(3) The time at which the right asserted was
9 initially recognized by the Supreme Court, where the
10 right has been newly recognized by the Court and is
11 retroactively applicable.

12 “(4) The time at which the factual predicate of
13 the claim or claims presented could have been dis-
14 covered through the exercise of reasonable dili-
15 gence.”.

16 **TITLE II—SPECIAL PROCEDURES**
17 **FOR COLLATERAL PROCEED-**
18 **INGS IN CAPITAL CASES**

19 **SEC. 201. DEATH PENALTY LITIGATION PROCEDURES.**

20 (a) IN GENERAL.—Title 28, United States Code, is
21 amended by inserting the following new chapter after
22 chapter 153:

1 **“CHAPTER 154—SPECIAL HABEAS CORPUS**

2 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

“2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

“2258. Filing of habeas corpus petition; time requirements; tolling rules.

“2259. Evidentiary hearings; scope of Federal review; district court adjudication.

“2260. Certificate of probable cause inapplicable.

“2261. Application to State unitary review procedures.

“2262. Limitation periods for determining petitions.

“2263. Rule of construction.

3 **“§ 2256. Prisoners in State custody subject to capital**
 4 **sentence; appointment of counsel; re-**
 5 **quirement of rule of court or statute; pro-**
 6 **cedures for appointment**

7 “(a) This chapter shall apply to cases arising under
 8 section 2254 brought by prisoners in State custody who
 9 are subject to a capital sentence. It shall apply only if the
 10 provisions of subsections (b) and (c) are satisfied.

11 “(b) This chapter is applicable if a State establishes
 12 by rule of its court of last resort or by statute a mecha-
 13 nism for the appointment, compensation and payment of
 14 reasonable litigation expenses of competent counsel in
 15 State postconviction proceedings brought by indigent pris-
 16 oners whose capital convictions and sentences have been
 17 upheld on direct appeal to the court of last resort in the
 18 State or have otherwise become final for State law pur-

1 poses. The rule of court or statute must provide standards
2 of competency for the appointment of such counsel.

3 “(c) Any mechanism for the appointment, compensa-
4 tion and reimbursement of counsel as provided in sub-
5 section (b) must offer counsel to all State prisoners under
6 capital sentence and must provide for the entry of an
7 order by a court of record: (1) appointing one or more
8 counsel to represent the prisoner upon a finding that the
9 prisoner is indigent and accepted the offer or is unable
10 competently to decide whether to accept or reject the offer;
11 (2) finding, after a hearing if necessary, that the prisoner
12 rejected the offer of counsel and made the decision with
13 an understanding of its legal consequences; or (3) denying
14 the appointment of counsel upon a finding that the pris-
15 oner is not indigent.

16 “(d) No counsel appointed pursuant to subsections
17 (b) and (c) to represent a State prisoner under capital
18 sentence shall have previously represented the prisoner at
19 trial or on direct appeal in the case for which the appoint-
20 ment is made unless the prisoner and counsel expressly
21 request continued representation.

22 “(e) The ineffectiveness or incompetence of counsel
23 during State or Federal collateral postconviction proceed-
24 ings in a capital case shall not be a ground for relief in
25 a proceeding arising under section 2254 of this chapter.

1 This limitation shall not preclude the appointment of dif-
2 ferent counsel, on the court's own motion or at the request
3 of the prisoner, at any phase of State or Federal
4 postconviction proceedings on the basis of the ineffective-
5 ness or incompetence of counsel in such proceedings.

6 **“§ 2257. Mandatory stay of execution; duration; limits**
7 **on stays of execution; successive peti-**
8 **tions**

9 “(a) Upon the entry in the appropriate State court
10 of record of an order under section 2256(c), a warrant
11 or order setting an execution date for a State prisoner
12 shall be stayed upon application to any court that would
13 have jurisdiction over any proceedings filed under section
14 2254. The application must recite that the State has in-
15 voked the postconviction review procedures of this chapter
16 and that the scheduled execution is subject to stay.

17 “(b) A stay of execution granted pursuant to sub-
18 section (a) shall expire if—

19 “(1) a State prisoner fails to file a habeas cor-
20 pus petition under section 2254 within the time re-
21 quired in section 2258, or fails to make a timely ap-
22 plication for court of appeals review following the de-
23 nial of such a petition by a district court;

24 “(2) upon completion of district court and court
25 of appeals review under section 2254 the petition for

1 relief is denied and (A) the time for filing a petition
2 for certiorari has expired and no petition has been
3 filed; (B) a timely petition for certiorari was filed
4 and the Supreme Court denied the petition; or (C)
5 a timely petition for certiorari was filed and upon
6 consideration of the case, the Supreme Court dis-
7 posed of it in a manner that left the capital sentence
8 undisturbed; or

9 “(3) before a court of competent jurisdiction, in
10 the presence of counsel and after having been ad-
11 vised of the consequences of his decision, a State
12 prisoner under capital sentence waives the right to
13 pursue habeas corpus review under section 2254.

14 “(c) If one of the conditions in subsection (b) has
15 occurred, no Federal court thereafter shall have the au-
16 thority to enter a stay of execution or grant relief in a
17 capital case unless—

18 “(1) the basis for the stay and request for relief
19 is a claim not previously presented in the State or
20 Federal courts;

21 “(2) the failure to raise the claim is (A) the re-
22 sult of State action in violation of the Constitution
23 or laws of the United States; (B) the result of the
24 Supreme Court recognition of a new Federal right
25 that is retroactively applicable; or (C) based on a

1 factual predicate that could not have been discovered
2 through the exercise of reasonable diligence in time
3 to present the claim for State or Federal
4 postconviction review; and

5 “(3) The facts underlying the claim would be
6 sufficient to establish by clear and convincing evi-
7 dence that but for constitutional error, no reasonable
8 fact finder would have found the petitioner guilty of
9 the underlying offense or eligible for the death pen-
10 alty under State law.

11 “(d) Notwithstanding any other provision of law, no
12 Federal district court or appellate judge shall have the au-
13 thority to enter a stay of execution, issue injunctive relief,
14 or grant any equitable or other relief in a capital case on
15 any successive habeas petition (or other action which fol-
16 lows the final determination of a first habeas corpus peti-
17 tion) unless the court first determines the petition or other
18 action does not constitute an abuse of the writ. This deter-
19 mination shall be made only by the district judge or appel-
20 late panel who adjudicated the merits of the original ha-
21 beas petition (or to the district judge or appellate panel
22 to which the case may have been subsequently assigned
23 as a result of the unavailability of the original court or
24 judges). In the Federal courts of appeal, a stay may issue
25 pursuant to the terms of this provision only when a major-

1 ity of the original panel or majority of the active judges
2 determines the petition does not constitute an abuse of
3 the writ.

4 **“§ 2258. Filing of habeas corpus petition; time re-**
5 **quirements; tolling rules**

6 “Any petition for habeas corpus relief under section
7 2254 must be filed in the appropriate district court within
8 one hundred and eighty days from the filing in the appro-
9 priate State court of record of an order under section
10 2256(c). The time requirements established by this section
11 shall be tolled—

12 “(1) from the date that a petition for certiorari
13 is filed in the Supreme Court until the date of final
14 disposition of the petition if a State prisoner files
15 the petition to secure review by the Supreme Court
16 of the affirmance of a capital sentence on direct re-
17 view by the court of last resort of the State or other
18 final State court decision on direct review;

19 “(2) during any period in which a State pris-
20 oner under capital sentence has a properly filed re-
21 quest for postconviction review pending before a
22 State court of competent jurisdiction; if all State fil-
23 ing rules are met in a timely manner, this period
24 shall run continuously from the date that the State
25 prisoner initially files for postconviction review until

1 final disposition of the case by the highest court of
2 the State, but the time requirements established by
3 this section are not tolled during the pendency of a
4 petition for certiorari before the Supreme Court ex-
5 cept as provided in paragraph (1); and

6 “(3) during an additional period not to exceed
7 sixty days, if (A) a motion for an extension of time
8 is filed in the Federal district court that would have
9 proper jurisdiction over the case upon the filing of
10 a habeas corpus petition under section 2254; and
11 (B) a showing of good cause is made for the failure
12 to file the habeas corpus petition within the time pe-
13 riod established by this section.

14 **“§ 2259. Evidentiary hearings; scope of Federal re-**
15 **view; district court adjudication**

16 “(a) Whenever a State prisoner under a capital sen-
17 tence files a petition for habeas corpus relief to which this
18 chapter applies, the district court shall—

19 “(1) determine the sufficiency of the record for
20 habeas corpus review based on the claims actually
21 presented and litigated in the State courts except
22 when the prisoner can show that the failure to raise
23 or develop a claim in the State courts is (A) the re-
24 sult of State action in violation of the Constitution
25 or laws of the United States; (B) the result of the

1 Supreme Court recognition of a new Federal right
2 that is retroactively applicable; or (C) based on a
3 factual predicate that could not have been discovered
4 through the exercise of reasonable diligence in time
5 to present the claim for State postconviction review;
6 and

7 “(2) conduct any requested evidentiary hearing
8 necessary to complete the record for habeas corpus
9 review.

10 “(b) Upon the development of a complete evidentiary
11 record, the district court shall rule on the claims that are
12 properly before it.

13 **“§ 2260. Certificate of probable cause inapplicable**

14 “The requirement of a certificate of probable cause
15 in order to appeal from the district court to the court of
16 appeals does not apply to habeas corpus cases subject to
17 the provisions of this chapter except when a second or suc-
18 cessive petition is filed.

19 **“§ 2261. Application to State unitary review proce-**
20 **dure**

21 “(a) For purposes of this section, a ‘unitary review’
22 procedure means a State procedure that authorizes a per-
23 son under sentence of death to raise, in the course of di-
24 rect review of the judgment, such claims as could be raised
25 on collateral attack. The provisions of this chapter shall

1 apply, as provided in this section, in relation to a State
2 unitary review procedure if the State establishes by rule
3 of its court of last resort or by statute a mechanism for
4 the appointment, compensation and payment of reasonable
5 litigation expenses of competent counsel in the unitary re-
6 view proceedings, including expenses relating to the litiga-
7 tion of collateral claims in the proceedings. The rule of
8 court or statute must provide standards of competency for
9 the appointment of such counsel.

10 “(b) A unitary review procedure, to qualify under this
11 section, must include an offer of counsel following trial
12 for the purpose of representation on unitary review, and
13 entry of an order, as provided in section 2256(c), concern-
14 ing appointment of counsel or waiver or denial of appoint-
15 ment of counsel for that purpose. No counsel appointed
16 to represent the prisoner in the unitary review proceedings
17 shall have previously represented the prisoner at trial in
18 the case for which the appointment is made unless the
19 prisoner and counsel expressly request continued represen-
20 tation.

21 “(c) Sections 2257, 2258, 2259, 2260, and 2262
22 shall apply in relation to cases involving a sentence of
23 death from any State having a unitary review procedure
24 that qualifies under this section. References to State ‘post-
25 conviction review’ and ‘direct review’ in those sections

1 shall be understood as referring to unitary review under
2 the State procedure. The references in sections 2257(a)
3 and 2258 to ‘an order under section 2256(c)’ shall be un-
4 derstood as referring to the post-trial order under sub-
5 section (b) concerning representation in the unitary review
6 proceedings, but if a transcript of the trial proceedings
7 is unavailable at the time of the filing of such an order
8 in the appropriate State court, then the start of the one
9 hundred and eighty day limitation period under section
10 2258 shall be deferred until a transcript is made available
11 to the prisoner or his counsel.

12 **“§ 2262. Limitation periods for determining petitions**

13 “(a)(1) A Federal district court shall determine such
14 a petition or motion within 60 days of any argument heard
15 on an evidentiary hearing, or where no evidentiary hearing
16 is held, within 60 days of any final argument heard in
17 the case.

18 “(2)(A) The court of appeals shall determine any ap-
19 peal relating to such a petition or motion within 90 days
20 after the filing of any reply brief or within 90 days after
21 such reply brief would be due. For purposes of this provi-
22 sion, any reply brief shall be due within 14 days of the
23 opposition brief.

24 “(B) The court of appeals shall decide any petition
25 for rehearing and or request by an appropriate judge for

1 rehearing en banc within 20 days of the filing of such a
2 petition or request unless a responsive pleading is required
3 in which case the court of appeals shall decide the applica-
4 tion within 20 days of the filing of the responsive pleading.
5 If en banc consideration is granted, the en banc court shall
6 determine the appeal within 90 days of the decision to
7 grant such consideration.

8 “(3) The time limitations contained in paragraphs
9 (1) and (2) may be extended only once for 20 days, upon
10 an express good cause finding by the court that the inter-
11 ests of justice warrant such a one-time extension. The spe-
12 cific grounds for the good cause finding shall be set forth
13 in writing in any extension order of the court.

14 “(4) Since the matters under paragraphs (1) and
15 (2)(A) are to be handled on a priority basis, the time from
16 filing of the petition or motion to final argument (under
17 paragraph (1)) or of the notice of appeal to the hearing
18 of the appeal (under paragraph (2)(A)) shall not exceed
19 4 months, unless exceptional circumstances require a
20 longer period. Where such time period exceeds 4 months
21 in any petition or motion (under paragraph (2)(A)), the
22 court shall set forth in writing the exceptional cir-
23 cumstances causing the delay.

24 “(b) The time limitations under subsection (a) shall
25 apply to an initial petition or motion, and to any second

1 or successive petition or motion. The same limitations
2 shall also apply to the re-determination of a petition or
3 motion or related appeal following a remand by the court
4 of appeals or the Supreme Court for further proceedings,
5 and in such a case the limitation period shall run from
6 the date of the remand.

7 “(c) The time limitations under this section shall not
8 be construed to entitle a petitioner or movant to a stay
9 of execution, to which the petitioner or movant would oth-
10 erwise not be entitled, for the purpose of litigating any
11 petition, motion, or appeal.

12 “(d) The failure of a court to meet or comply with
13 the time limitations under this section shall not be a
14 ground for granting relief from a judgment of conviction
15 or sentence. The State or Government may enforce the
16 time limitations under this section by applying to the court
17 of appeals or the Supreme Court for a writ of mandamus.

18 “(e) The Administrative Office of United States
19 Courts shall report annually to Congress on the compli-
20 ance by the courts with the time limits established in this
21 section.

22 **“§ 2263. Rule of construction**

23 “This chapter shall be construed to promote the expe-
24 ditious conduct and conclusion of State and Federal court
25 review in capital cases.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters
 2 at the beginning of part VI of title 28, United States Code,
 3 is amended by inserting after the item relating to chapter
 4 153 the following new item:

“154. **Special habeas corpus procedures in capital cases 2256**”.

5 **TITLE III—FUNDING FOR LITIGA-**
 6 **TION OF FEDERAL HABEAS**
 7 **CORPUS PETITIONS IN CAP-**
 8 **ITAL CASES**

9 **SEC. 301. FUNDING FOR DEATH PENALTY PROSECUTIONS.**

10 Part E of title I of the Omnibus Crime Control and
 11 Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is
 12 amended by adding at the end the following new section:

13 “SEC. 515. Notwithstanding any other provision of
 14 this subpart, the Director shall provide grants to the
 15 States, from the funding allocated pursuant to section
 16 511, for the purpose of supporting litigation pertaining to
 17 Federal habeas corpus petitions in capital cases. The total
 18 funding available for such grants within any fiscal year
 19 shall be equal to the funding provided to capital resource
 20 centers, pursuant to Federal appropriation, in the same
 21 fiscal year.”.

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